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BOARD HEARING

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Joseph C. Rust  
Attorney at Law

June 20, 1994

TO WHOM IT MAY CONCERN:

Re: Utah Code Ann. §40-8-4(3)(b) and (8)(b)

This letter is to identify some of the legislative history of the 1987 amendments to the above sections of the Utah Code.

In late 1986, it came to my attention that Utah Department of Oil, Gas and Mining was claiming that removing and crushing consolidated materials to make aggregate rock supposedly was a mining activity and came within their jurisdiction. Inasmuch as the end product was used in the normal applications of sand and gravel which the Utah Supreme Court has several times determined not to be a mineral, I was surprised that the Department of Oil, Gas and Mining was taking this position. Representing as I do a number of sand and gravel operations, I became sufficiently concerned that I and Barney Gesas, another attorney who also represented at that time a number of sand and gravel operations, contacted the Representative whom we knew to be involved in some major changes to the above Code sections.

Mr. Gesas and I made an appointment with the Representative and pointed out our concerns. We noted among other things that Utah Department of Transportation is one of the largest consumers of the kind of materials at issue in this situation and therefore an increase in the cost to sand and gravel operators would have to be passed on to the Department of Transportation and other governmental as well as private users. We pointed out to the Representative further that there is no justifiable difference between removing consolidated and non-consolidated materials which eventually become sand and gravel and aggregate rock. Therefore we saw no reason why the law should discriminate simply on the basis that some operations process larger boulders in a crushing operation to reduce them to smaller rocks as opposed to operations which remove sand and gravel as loose material.

The Representative seemed to agree with us and asked what changes we would propose to the law. Mr. Gesas and I then pointed out the additions that we would like in the law, specifically TO

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excluding from the operation of the law rock, sand and gravel. We made the appropriate notations on his copy of the bill and he included that as part of the material he presented on the floor of the House of Representatives. Amendments with our changes passed the House of Representatives. The bill then went to the Senate. I called the Senator who was sponsoring the bill in the Senate and expressed the same concerns and feelings to him. He agreed with my conclusions and the bill passed the Senate basically without any opposition.

In this recent legislative session, an effort was made to delete the words rock, sand and gravel from the above statutes. When the committee which had responsibility for it under the direction of Representative Dan Price held a hearing on the matter, the sponsor of the bill did not show up and ultimately withdrew the bill. It is my understanding that the bill had its genesis with the Department of Oil, Gas and Mining.

Sincerely,

KESLER & RUST

  
Joseph C. Rust

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